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TOCAD AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOBY, INC.,

Plaintiff,

v.

TOCAD AMERICA, INC.,

Defendant.

Case No. 3:07-cv-06455-SI

**DECLARATION OF BRANDY R.
MCMILLION IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

**[REDACTED PUBLIC VERSION OF
DOCUMENT SUBMITTED UNDER SEAL]**

1 I, Brandy R. McMillion, declare as follows:

2 1. I am an associate at Perkins Coie LLP and counsel to Defendant ToCAD America,
3 Inc. ("Tocad"). I make this declaration based on my personal knowledge and if called as a
4 witness I am competent to testify to the matters set forth herein.

5 2. Attached hereto as Exhibit A is a true and correct copy of the Stipulation re Joby's
6 Motion for Preliminary Injunction, entered by the Court on May 6, 2008.

7 3. Attached hereto as Exhibit B are true and correct copies of the financial
8 information produced by Joby during discovery, JOBY000013-JOBY000021, JOBY000314-
9 JOBY000329. These documents show that the first sale of the Gorillapod occurred in February
10 2006. See JOBY000020, JOBY000316. The first sale of a colored Gorillapod was in August
11 2007. See JOBY000019, JOBY000325.

12 4. Attached hereto as Exhibit C are true and correct copies of the financial
13 information produced by Tocad during discovery, TOC00818-TOC00827, TOC00838. These
14 documents show that the first sale of the Flexpod was in October 2006. See TOC00819. The
15 first sale of a colored Flexpod was in November 2006. See TOC00819. Document No.
16 TOC00838 shows that the total gross profits for the sale of all Tocad Flexpod and Flexpod Plus
17 units are on sales of: **REDACTED**

18 5. Attached hereto as Exhibit D is a true and correct copy of the Declaration of
19 JoeBen Bevirt in Support of Joby's Motion for Preliminary Injunction, filed with the Court on
20 March 28, 2008.

21 6. Attached hereto as Exhibit E are true and correct copies of screenshots from Joby's
22 website, www.joby.com. These screenshots were captured and printed on June 19, 2008.

23 7. Attached hereto as Exhibit F is a true and correct copy of a document produced by
24 Joby during discovery, JOBY000177. This document is a product overview of the Joby
25 Gorillapod.

26 8. Attached hereto as Exhibit G is a true and correct copy of Joby's Response to
27 Tocad's First Set of Interrogatories, served on May 9, 2008.

1 9. Attached hereto as Exhibit H are true and correct copies of two drawings of Tocad
2 redesign efforts which were rejected by Joby.

3 10. Attached hereto as Exhibit I is a true and correct copy of a document produced by
4 Joby during discovery, JOBY000176. This document includes a photograph of the colored
5 versions of the Gorillapod.

6 11. Attached hereto as Exhibit J is a true and correct copy of the United States Patent
7 Application Publication, US2007/0154254, filed with the United States Patent and Trademark
8 Office on January 3, 2006.

9 12. Attached hereto as Exhibit K is a true and correct copy of the United States Patent
10 Application Publication, US2007/0212163, filed with the United States Patent and Trademark
11 Office on May 9, 2007.

12 13. Attached hereto as Exhibit L is a true and correct copy of the Information
13 Disclosure Statement and Declaration of Inventor JoeBen Bevirt, filed with the United States
14 Patent and Trademark Office on November 20, 2006.

15 14. Attached hereto as Exhibit M are true and correct copies of Joby's amended claims
16 to US2007/0154254, filed with the United States Patent and Trademark Office on July 7, 2007
17 and February 22, 2008.

18 15. Attached hereto as Exhibit N is a true and correct copy of Joby's Preliminary
19 Amendment to the claims of US2007/0212163, filed with the United States Patent and Trademark
20 Office on March 5, 2008.

21 16. Attached hereto as Exhibit O is a true and correct copy of a letter dated October 1,
22 2007 sent to Photographic Research Organization, Inc. from Rachael Samberg of Fenwick &
23 West, LLP, counsel for Joby, Inc.

24 17. Attached hereto as Exhibit P is a true and correct copy of a document produced by
25 Tocad during discovery, TOC00029. This document is a photograph of the Flexpod unit in its
26 original packaging.

27 18. Attached hereto as Exhibit Q are true and correct copies of screenshots from the
28 Tocad website, www.tocad.com. These screenshots were captured and printed on June 19, 2008.

1 19. Attached hereto as Exhibit R is a true and correct copy of a letter dated September
2 6, 2007 sent to Michael O. Warnecke of Perkins Coie LLP, counsel for Tocad. This letter is from
3 Virginia K. DeMarchi of Fenwick & West LLP, counsel to Joby, Inc.

4 20. Attached hereto as Exhibit S are true and correct copies of a letter dated December
5 21, 2007 sent to Michael O. Warnecke of Perkins Coie LLP, counsel for Tocad America, Inc. and
6 a letter dated May 22, 2008 sent to Photographic Research Organization, Inc. Both of these letters
7 are from Virginia K. DeMarchi of Fenwick & West LLP, counsel to Joby, Inc.

8 21. Attached hereto as Exhibit T is a true and correct copy of a document produced by
9 Tocad during discovery, TOCE0002252. This document is a photograph of the Flexpod Plus.

10 22. Attached hereto as Exhibit U is a true and correct copy of a document produced by
11 Tocad during discovery, TOC00150. This document is a photograph of the colored version of the
12 Flexpod.

13 23. Attached hereto as Exhibit V is a true and correct copy of a document produced by
14 Joby during discovery, JOBY000150. This document is an advertisement for the Joby
15 Gorillapod.

16 24. Attached hereto as Exhibit W are true and correct copies of documents produced
17 by Joby during discovery, JOBY000072, JOBY000075 and JOBY000078. These documents are
18 additional advertisements for the Joby Gorillapod.

19 25. Attached hereto as Exhibit X is a compilation of photographs of various packaging
20 displays for consumer products. These photographs were taken by the undersigned at a Best Buy
21 in Chicago, Illinois on June 17, 2008.

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26. Attached hereto as Exhibit Y are true and correct copies of Income Statements produced by Joby during discovery, JOBY000022-JOBY000032. These documents show that "6360 Marketing Expenses" from February 2006 to September 2006 equal . See JOBY000032. Additionally, expenses for "6355 Tradeshow General" from February 2006 to September 2006 equal . These amounts total , accounting for money spent by Joby on marketing and trade shows prior to the introduction of the Flexpod. **REDACTED**

Date: June 20, 2008

By: 

Brandy R. McMillion
Perkins Coie LLP

Attorneys for Defendant
TOCAD AMERICA, INC.

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